

REMARKS

Claims 1 and 86-107 are pending. No claim amendments are presented at this time. Accordingly, claims 1 and 86-107 will remain pending in the application.

ELECTION/RESTRICTIONS

The Examiner alleges that the pending claims are generic to a plurality of patentably distinct species and, in accordance with 35 U.S.C. §§ 121 and 372, requires restriction to and election of one species from each of the following groups of allegedly patentably distinct species:

I. A species of signal peptide selected from the sequence of:

A. SEQ ID NO:1 or B. SEQ ID NO:3.

II. A species of β integrin selected from:

A. β 2, B. β 3, C. β 5 or D. β 6 .

III. A species of cancer selected from:

A. prostate, B. lymphoma, C. leukemias, D. tongue, salivary glands, gums, floor and other areas of the mouth, E. oropharynx, nasopharynx, hypopharynx and other oral cavities, F. oesophagus, G. stomach, H. duodenum, I. colon, J. rectum, K. gallbladder, L. pancreas, M. larynx, N. trachea, O. bronchus, lung, P. breast, Q. uterus, R. cervix, S. ovary, T. vagina, U. vulva, V. testes, W. penis, X. bladder, Y. kidney, Z. thyroid, AA. skin and AB. liver.

Applicant provisionally elects, subject to the following traverse: SEQ ID NO:1 as the signal sequence; β 6 as the β integrin; and colon cancer as species of cancer. Claims 96, 100, 101 and 105 read on the elected species.

Applicant notes that upon allowance of a generic claim, Applicant will be entitled to consideration of claims to additional species that depend from or otherwise require all the limitations of an allowable generic claim as provided by 35 C.F.R. §1.141.

Applicant respectfully traverses the requirement for species election and submit that the requirement is improper.

First, Applicant asserts that the various species represent different embodiments of a single inventive concept for which a single patent should issue. The pending claims represent an intricate web of knowledge, continuity of effort, and consequences of a single invention, which merit examination of all of the species in a single application. More particularly, a single, searchable, unifying aspect links all of the claims. This single, searchable, unifying aspect is treatment of cancer cells with a polypeptide that binds to a binding domain of a MAP kinase for a β integrin subunit wherein the β integrin subunit is essentially not expressed by the cancer cells.

The elected species are only embodiments and the invention is not limited thereto. Indeed, any “facilitator moiety” for facilitating passage of the polypeptide/peptide active across the outer cell membrane into target cancer cells can be employed, not just the elected signal peptide, and the skilled artisan could readily select and employ any such suitable conventionally known moieties without undue experimentation.

Similarly, the particular β integrin subunit and the cancer treated are merely particular examples of a number of alternatives.

More particularly, in the context of the claimed invention, there is no difference between the particular “facilitator moiety” employed, β integrin subunit, and the cancer treated from the other possible alternative forms of these recited in the subsidiary claims.

Second, Applicant submits that a sufficient search and examination with respect to all the claims and species recited in the claims can be made without serious burden. As MPEP § 803 states:

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.

That is, even if the species are patentably distinct, the Examiner must still examine the entire application on the merits because doing so will not result in a serious burden.

Applicant submits that the search and examination of all the claimed species will have substantial overlap, and no serious burden will result from searching and examining all species in the same application. This is especially true given the robust and extensive computerized search engines and databases at the Examiner's disposal.

Accordingly, in the interests of efficiency and cost savings to both Applicant and the Patent Office, Applicant respectfully requests that all species be examined in the same application.

If a telephone call with Applicant's representative would be helpful to resolve any issues regarding the requirement for species election and/or to otherwise expedite prosecution of the application, Applicant invites the Examiner to contact the undersigned at the telephone number shown below.

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Respectfully submitted,

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